



HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

VS.

HIGHLAND CAPITAL MANAGEMENT  
SERVICES, INC., JAMES DONDERO,  
NANCY DONDERO, AND THE DUGABOY  
INVESTMENT TRUST,

Defendants.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

VS.

HCRE PARTNERS, LLC (n/k/a NexPoint Real Estate Partners, LLC), JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,

Defendants.

Adv. Proc. No. 21-3006-sgj

Case No. 3:21-cv-00881-X

Adv. Proc. No. 21-3007-sgj

Case No. 3:21-cv-00881-X

**ERRATA TO  
DECLARATION OF JOHN A. MORRIS IN SUPPORT OF PLAINTIFF’S OMNIBUS  
MOTION (A) TO STRIKE CERTAIN DOCUMENTS AND ARGUMENTS FROM THE  
RECORD, (B) FOR SANCTIONS, AND (C) FOR AN ORDER OF CONTEMPT**

Highland Capital Management, L.P., the plaintiff in the above-captioned adversary proceedings (the “Adversary Proceedings”) and the reorganized debtor (“Highland” or the “Plaintiff”), hereby submits this errata (the “Errata”) to **Exhibit 1** attached to the *Declaration of John A. Morris in Support of Plaintiff’s Omnibus Motion (a) to Strike Certain Documents and Arguments from the Record, (b) for Sanctions, and (c) for an Order of Contempt* (the “Declaration”) and respectfully states as follows:

1. In Exhibit 1 attached to the Declaration, Highland inadvertently redacted footnote 79. The correct redaction should be to footnote 76.

2. Accordingly, Exhibit 1 shall be deemed superseded and replaced with amended Exhibit 1 (“**Amended Exhibit 1**”), attached hereto as **Exhibit A**, which redacts footnote 76.

*[Remainder of Page Intentionally Blank]*

Dated: February 18, 2022

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No. 143717)  
John A. Morris (NY Bar No. 266326)  
Gregory V. Demo (NY Bar No. 5371992)  
Hayley R. Winograd (NY Bar No. 5612569)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Email: jpomerantz@pszjlaw.com  
jmorris@pszjlaw.com  
gdemo@pszjlaw.com  
hwinograd@pszjlaw.com

-and-

**HAYWARD PLLC**

*/s/ Zachery Z. Annable*

---

Melissa S. Hayward (Texas Bar No. 24044908)  
Zachery Z. Annable (Texas Bar No. 24053075)  
10501 N. Central Expy, Ste. 106  
Dallas, Texas 75231  
Tel: (972) 755-7100  
Fax: (972) 755-7110  
Email: MHayward@HaywardFirm.com  
ZAnnable@HaywardFirm.com

*Counsel for Highland Capital Management, L.P.*

**EXHIBIT A**

# **EXHIBIT 1**

Clay M. Taylor  
Bryan C. Assink  
BONDS ELLIS EPPICH SCHAFFER JONES LLP  
420 Throckmorton Street, Suite 1000  
Fort Worth, Texas 76102  
(817) 405-6900 telephone  
(817) 405-6902 facsimile  
Email: [clay.taylor@bondsellis.com](mailto:clay.taylor@bondsellis.com)  
Email: [bryan.assink@bondsellis.com](mailto:bryan.assink@bondsellis.com)

**Attorneys for James Dondero**

Deborah Deutsch-Perez  
Michael P. Aigen  
STINSON LLP  
3102 Oak Lawn Avenue, Suite 777  
Dallas, Texas 75219  
(214) 560-2201 telephone  
(214) 560-2203 facsimile  
Email: [deborah.deutschperez@stinson.com](mailto:deborah.deutschperez@stinson.com)  
Email: [michael.aigen@stinson.com](mailto:michael.aigen@stinson.com)

**Attorneys for James Dondero, Nancy Dondero,  
Highland Capital Management Services, Inc. and  
NexPoint Real Estate Partners, LLC**

Davor Rukavina  
Julian P. Vasek  
MUNSCH HARDT KOPF & HARR, P.C.  
500 N. Akard Street, Suite 3800  
Dallas, Texas 75202-2790  
(214) 855-7500 telephone  
(214) 978-4375 facsimile  
Email: [drukavina@munsch.com](mailto:drukavina@munsch.com)

**Attorneys for NexPoint Advisors, L.P. and  
Highland Capital Management Fund Advisors, L.P.**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**In re:** \_\_\_\_\_ § **Case No. 19-34054**

**HIGHLAND CAPITAL MANAGEMENT, L.P.** § **Chapter 11**

**Debtor.**

**HIGHLAND CAPITAL MANAGEMENT, L.P.,**

**Plaintiff,**

**VS.**

**JAMES DONDERO, NANCY DONDERO, AND  
THE DUGABOY INVESTMENT TRUST,**

**Defendants.**

Journal of Management Inquiry 25(4) 391-407

Case No. 19-34054

## Chapter 11

**Adv. Proc. No. 21-03003-sgj**

the HCRE Term Note pursuant to the respective oral SSAs are genuine issues of material fact.<sup>76</sup> Moreover, as discussed in greater detail below, Plaintiff failed to remind HCMS of prepayments that had been made that relieved it of the obligation to make any additional payment in 2020.

## **E. Prepayment on the Term Notes**

### **1. NexPoint's Prepayments**

29. NexPoint asserts the affirmative defense of prepayment on the NexPoint Note, which relieved NexPoint of any obligation to make any additional payment in 2020. Thus, the NexPoint Note was not in default when no payment was made on December 31, 2020. NexPoint demonstrates *infra* that there is evidence supporting this affirmative defense and summary judgment denying this affirmative defense is inappropriate as a matter of law.

30. There is no dispute of fact that, between March and August of 2019, the following payments were made on the NexPoint Note (collectively, the “NexPoint Prepayments”): (i) \$750,000.00 on March 29, 2019; (ii) \$1,300,000.00 on April 16, 2019; (iii) \$300,000.00 on June 4, 2019; (iv) \$2,100,000.00 on June 19, 2019; (v) \$630,000.00 on July 9, 2019; and (vi) \$1,300,000.00 on August 13, 2019.<sup>77</sup> These payments totaled \$6,380,000.00 in 2019.<sup>78</sup> The normal December, 2019 payment of principal and interest on the Note would have been \$2,273,970.54, leaving \$4,106,029.46 remaining to apply as prepayments on the Note.

31. None of the aforementioned payments were scheduled payments or payments on arrears.<sup>79</sup> Rather, they were prepayments since the Plaintiff needed money and asked NexPoint to transfer its funds for liquidity purposes, which NexPoint did.<sup>80</sup> These transfers were intended by

---

<sup>77</sup> Pl. Ex. 200, Amortization Schedule, Pl. Appx. 03249.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> Def. Ex. 1, J Dondero Dec., ¶ 42, Def. Appx. 21.